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IN THE

Supreme Court of the United States

October Term, 1970
No. 695

ALVIN WEINGAND, JACK D. KISCH, REYNOLDS YATER, JINNIE HUGLIN, NORMAN SANDERS, MARGARET D. GREENWALD, ARTHUR DAYTON, LEWIS MOTTER SMITH, MRS. GEORGE M. SIDENBERG, JR., MRS. KENNETH PECK, ROBERT O. EASTON, CHARLES M. CAMPBELL, JR., KENNETH MILLAR, WILLIAM URE, JAMES BOTTOMS, FRED EISSLER, NORMAN S. NYCE, MRS. H. R. BENHAM, JR.,

Petitioners,

vs.

WALTER J. HICKEL, Secretary of the Interior; WILLIAM T. PECORA, Director United States Geological Survey, D. W. SOLANAS, Regional Supervisor, Oil and Gas Division, United States Geological Survey; LEE A. DUBRIDGE, Science Advisor to the President of the United States; JOHN S. STEINHART, Office of Science and Technology and Executive Secretary to the Special Panel on the Future of the Union Oil Lease; GULF OIL COMPANY; MOBIL OIL CORPORATION; TEXACO INC., UNION OIL CO.,

Respondents.

COUNTY OF SANTA BARBARA, a political subdivision of the State of California, and THE CITY OF SANTA BARBARA, a municipal corporation of the State of California,

Petitioners,

vs.

WALTER J. HICKEL, Secretary of the Interior, United States of America; D. W. SOLANAS, Regional Supervisor, Oil and Gas Division, United States Geological Survey; UNION OIL COMPANY OF CALIFORNIA, a California corporation; PAULEY PETROLEUM, a corporation; MOBIL OIL CORPORATION, a New York corporation; PHILLIPS PETROLEUM COMPANY, a corporation; WESTERN OFFSHORE DRILLING AND EXPLORATION COMPANY, a corporation; STANDARD OIL COMPANY, a corporation; HUMBLE OIL COMPANY, a corporation; PETER BAWDEN DRILLING, INC., a Delaware corporation; GULF OIL COMPANY, a

(Continued on next page)

Pennsylvania corporation; TEXACO INC., a Delaware corporation; and ATLANTIC-RICHFIELD OIL CORPORATION, a corporation;

Respondents.

COUNTY OF SANTA BARBARA, a political subdivision of the State of California, THE CITY OF SANTA BARBARA, a municipal corporation of the State of California; ALVIN WEINGAND; JACK D. KISCH; REYNOLDS YATER; JINNIE HUGLIN; NORMAN SANDERS; MARGARET D. GREENWALD; ARTHUR DAYTON; LEWIS MOTTER SMITH; MRS. GEORGE M. SIDENBERG, JR.; MRS. KENNETH PECK; ROBERT O. EASTON; CHARLES M. CAMPBELL, JR.; KENNETH MILLAR; WILLIAM URE; JAMES BOTTOMS; FRED EISSLER; NORMAN S. NYCE; MRS. H. R. BENHAM, JR.,

Petitioners,

vs.

ROBERT J. MALLEY, Los Angeles District Engineer, Corps of Engineers, UNION OIL COMPANY OF CALIFORNIA, a California corporation; MOBIL OIL CORPORATION, a New York corporation; PHILLIPS PETROLEUM COMPANY, a Delaware corporation; STANDARD OIL COMPANY OF CALIFORNIA, a California corporation; HUMBLE OIL AND REFINING COMPANY, a Delaware corporation; TEXACO, INC., a Delaware corporation; ATLANTIC-RICHFIELD COMPANY, a Pennsylvania corporation; GULF OIL COMPANY, a Pennsylvania corporation; PAULEY PETROLEUM, INC., a Delaware corporation; COLORADO OIL AND GAS CORPORATION, a Delaware corporation; MESA PETROLEUM CO., a Delaware corporation; McCULLOCH OIL CORPORATION OF CALIFORNIA, a Delaware corporation; J. M. HUBER CORPORATION, a New Jersey corporation; HUSKY OIL COMPANY OF DELAWARE, a Delaware corporation; SUN OIL COMPANY, a New Jersey corporation; SHELL OIL COMPANY, a Delaware corporation,

Respondents.

Answer to Motion to Defer Consideration of Petition for Writ of Certiorari.

Defendants Humble *et al.* oppose a motion to delay consideration of the petition for certiorari. Briefly stated, the problem is as follows:

There are pending in the United States District Court renewed motions for preliminary injunctions and motions to dismiss. The motions to dismiss assert, among other things, that under the applicable statutes and regulations, plaintiffs do not have the rights they assert by the complaints. The complaint asserts, as respects the Engineers, that the Engineers were obligated to hold a public hearing before issuing permits to drill wells under Outer Continental Shelf leases. The motion to dismiss says that this is wrong as a matter of law and does not state a claim. Comparable problems arise with respect to the complaints against the Department of the Interior. Those complaints do assert the unconstitutionality of the Outer Continental Shelf Act. But plaintiffs have treated them as also asserting that the Secretary of the Interior has not complied with that Act and applicable regulations in that he issued leases, and after issuing leases, authorized continued operations without a hearing.

These are in large part issues passed upon by the Court of Appeals which are now before this Court on the petitions for certiorari. Final decisions on these appeals will be the law of the case, and will be determinative in large part in the District Court. So long as the

application for certiorari is under submission, however, they are not final.

While that is the case, it is quite impossible to have any meaningful hearings in the District Court. Of necessity, it is bound by the appellate opinion, once it becomes final, and at this point can hardly do other than wait. We are concerned, therefore, that plaintiffs' proposed course of procedure will have the effect of creating a circular impasse. The District Court ought to wait for a final appellate decision before dealing with the motions now before it. If the District Court awaits an infinitely deferred ruling on certiorari, and this Court awaits action in the District Court, it is hard for us to see how anything can happen. For example, one of the propositions asserted in the petition for certiorari is that the Court of Appeals erred in determining that all constitutional questions were for the three-judge court. This Court is asked to overrule that determination. Can it be suggested that the three-judge court ought to proceed on the same constitutional questions, at the instance of plaintiffs, while plaintiffs here maintain that those questions ought to have been determined by the Court of Appeals?

We suggest that the cases before the Court on petition for certiorari present straightforward questions of statutory and regulatory construction, which have been resolved in the only possible way by the Court of Appeals. The applications for certiorari should be denied. If other questions arise in pending proceedings, they can be brought before this Court in the regular way. There is no point to further delay.

So that this Court can have something a little better than a series of ex parte descriptions of proceedings

the District Court, we attach as exhibits plaintiff's latest memorandum in the District Court and our response, which describes more fully the matters pending. The exchange is correct: our response was filed today.

Respectfully submitted,

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EXHIBIT 1.

Another Memorandum.

United States District Court, Central District of California.

County of Santa Barbara, et al., Plaintiffs, vs. Fred J. Russell, (Hickel) et al.,[1] Defendants. No. 69-636-ALS.

Alvin Weingand, et al., Plaintiffs, vs. Fred J. Russell, (Hickel) et al., Defendants. No. 69-1317-ALS.

County of Santa Barbara, et al., Plaintiffs, vs. Robert J. Malley, et al., Defendants. No. 69-1986-ALS.

This memorandum is intended 1) to augment the Memorandum filed on November 19, 1970; and, 2) to bring to the attention of Judges James M. Carter, Manuel L. Real, and Ray McNichols—particularly to Judge McNichols—in summary form, the motions in the above cases, presently pending—as well as the present position of the plaintiffs, with respect to these motions.

In addition to aiding the cause of the plaintiffs, we are hopeful that this memorandum will be helpful to all the judges of the 3-Judge Court—and, particularly to Judge McNichols, who has undertaken all the Santa Barbara cases—26 in number; and, who, in the three instant injunction cases is faced with "mountains" of papers—cases which have already been (albeit in a different context) to the Supreme Court of the United States, 396 U.S. 950, and to the Court of Appeals for he Ninth Circuit, Nos. 25049 and 25413;

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[1]Walter J. Hickel, heretofore the principal defendant herein, is no longer Secretary of Interior; the Acting Secretary is Fred J. Russell. Hence, our substituting his name for that of Secretary Hickel. See Rule 25(d)(1), Federal Rules of Civil Procedure.

and are presently back in the Supreme Court, on Petition for Writ of Certiorari, No. 695, this Term of Court.[2]

One of counsel for the non-government plaintiffs has given up his plans for an extended—or any—vacation beginning December 16, 1970 (as stated in our Memorandum of November 19, 1970)—this despite the lure of Waikiki. His commitments to the cause of the plaintiffs, professional and on principle, make it improvident for him to be unavailable, should this Court, or any of its Judges, be available to hold a hearing between December 16, 1970 and mid-January, 1971 (the dates of the heretofore planned vacation). Accordingly, he will remain on hand for a hearing at any time; and will take his vacation thereafter.

The motions presently pending and awaiting adjudication are:

1. In the *Russell* cases:

i. Defendants' Motions to Dismiss, filed in July and August, 1969;

ii. Plaintiffs' Motions for Preliminary Injunction, filed June 5, 1970;

iii. Plaintiffs' Motions for Production of Documents, filed July 1, 1970;

iv. Plaintiffs' Motions for Leave to Amend by Interlineation, filed July 1, 1970.

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[2]As to that proceeding, we have already submitted to the judges of this Court the pleadings in the Supreme Court. We are presently preparing, for filing in that Court, a Motion that the Supreme Court defer disposition of the Petition, to await action by this Court on the pending motions. We shall furnish the Judges of this Court with copies of that motion to defer when prepared.

2. In the *Malley* case:

i. Defendants' Motions to Dismiss, filed in October, November and December, 1969;

ii. Plaintiffs' Motion for Leave to Amend by Interlineation, filed July 2, 1970;

iii. Plaintiffs' Motion for Preliminary Injunction, filed July 17, 1970.

As to the motions in *Malley*, it is clear they must be decided by a one-Judge Court—now Judge McNichols—no three-Judge Court having been appointed since plaintiffs in that case are not seeking an injunction against the enforcement of an Act of Congress on the ground of repugnancy to the Constitution.

As to the motions in *Russell*, we understand that all parties are in agreement that two of them—the defendants' motions to dismiss and the plaintiffs' motion for preliminary injunction—must be decided by the three-Judge Court. As to the other two—the motions for production of documents and to amend by interlineation, it is our present view that these could—and perhaps should—at the same time as the motions in *Malley*, be heard by Judge McNichols, as a single judge. We now can see no strong reason for taking the time of Judges Carter and Real to listen to oral arguments on these latter two motions. These motions are on procedural matters, of some importance, of course, but not of substantive or critical import.

We suggest, accordingly—and request—that the *Malley* motions be heard by Judge McNichols, at a time, as soon as may be, convenient to Judge McNichols, and that the production and amend motions in *Russell* be set down for the same time.

(As to place, "California Mohammeds" will go to the mountains of Idaho; but, we suggest that, at this time of the year, Southern California's "sub-tropical" climate is to be preferred to the frigid chills of an Idaho fall or winter.)

(Should the 3-Judge Court, or any of its Judges, desire it, we shall be glad to arrange for a transcript of the oral argument to be made available to the Court, or to any of its Judges.)

Plaintiffs' counsel are presently ready for a hearing on all the pending motions; and we bespeak as early a hearing on them as may be.

Finally, if our suggestion that the two motions in *Russell* that may be heard by a single judge be heard by him, will result in any delay of the hearing on the motions in that case that must be determined by the three-judge court, we respectfully withdraw that suggestion.

Respectfully submitted,

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CERTIFICATE OF SERVICE BY MAIL

FRED OKRAND certifies that he is and was, at all times mentioned herein, an active member of the State Bar of California and not a party to the within action or proceeding; that his business address is 257 South Spring Street, Los Angeles, California 90012, and that on December 1, 1970 he served the within

ANOTHER MEMORANDUM

on the defendants by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a United States Post Office facility regularly maintained by the Government of the United States at Los Angeles, California; that the names and addresses of the persons served, as shown on said envelopes, were as follows:

Robert L. Meyer, U. S. Attorney, Central District, 1100 U. S. Courthouse, 312 N. Spring Street, Los Angeles, California 90012.

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Executed on December 1, 1970 at Los Angeles, California.

Fred Okrand

EXHIBIT 2.

Memorandum Responding to "Another Memorandum" by Plaintiffs.

United States District Court, Central District of California.

County of Santa Barbara, et al., Plaintiffs, vs. Walter J. Hickel (Russell), et al., Defendants. No. 69-636-ALS.

Alvin Weingand, et al., Plaintiffs, vs. Walter J. Hickel (Russell), et al., Defendants. No. 69-1317-ALS.

County of Santa Barbara, et al., Plaintiffs, vs. Robert J. Malley, et al., Defendants. No. 69-1986-ALS.

This will supplement plaintiffs' memorandum summarizing the status of certain cases before this Court. To preserve clarity, we will use the captions including Hickel's name, with Russell in parenthesis thereafter.

The Santa Barbara Channel cases pending before this Honorable Court fall into two categories. On the one hand, there are the numerous damage actions filed against the four Platform A companies (Union, as operator, and Texaco, Gulf and Mobil), which are now being determined pursuant to stipulation before the Masters appointed by the Court. On the other hand, there are the three cases which are the subject of plaintiffs' "Another Memorandum". These are injunction, not damage, cases, and are not confined to companies involved in the Platform A spill—indeed, the principal defendants are others. These are the cases now under discussion.

These cases, *County of Santa Barbara v. Hickel (Russell)*, No. 69-636-ALS, and *County of Santa Barbara v. Robert J. Malley*, No. 69-1986-ALS, have at-

tempted to bring to a stop, on one procedural device or another, all oil operations on Federal lands, whether by companies involved in the Platform A spill or not, in the Santa Barbara Channel. *Weingand v. Hickel (Russell)*, No. 69-1317-ALS, is a similar case but brought only against the four Platform A partners. While we hesitate to add to the vast volume of paper already accumulated in these files, perhaps a further outline of the issues in these cases and their past history may also be of assistance.

First a matter of very general background. As is indicated in some detail in various memoranda in the file, oil has been produced in the waters adjacent to Santa Barbara County for a great many years. Thus, there are upwards of 200 wells operated on platforms by lessees of the State of California offshore of the County. In 1968, the United States sold leases on Outer Continental Shelf lands in the Santa Barbara Channel for upwards of $600 million. Humble, whom we represent, paid approximately $240 million for certain leases.

The unfortunate Platform A spill took place in January of 1969. Operations were suspended by the Secretary of the Interior for several months. Thereafter, they have proceeded subject to rigid restrictions. These cases followed.

Weingand was the first filed. Humble, and the other parties who join in this brief, are not involved in the *Weingand* case. However, again as a matter of background, it is necessary to touch on it briefly. *Weingand* was initially concerned with the DuBridge Report. After operations in the Channel were shut down, the President appointed a special panel headed by Dr.

Lee DuBridge, formerly President of California Institute of Technology, which reported that it was advisable to produce oil from the structure over which Platform A was situated, for the very practical reason that if oil field pressures were not relieved through production, more oil would escape into the ocean than if such production took place. *Weingand* was essentially an attempt to enjoin implementation of that decision, at least until a hearing had been held preceded by production to plaintiffs of whatever information the DuBridge Panel relied upon. A preliminary injunction was denied, implementation has proceeded, and it is hard to see what issue remains in connection with that complaint as originally filed.

The second case, *County of Santa Barbara v. Hickel (Russell)*, involves a two-count complaint. The first count asserts the theory that drilling in the Outer Continental Shelf is an "ultrahazardous activity", and draws the conclusion that the Secretary acted beyond his authority in issuing leases in the area. The second count asserts that the Outer Continental Shelf Act is unconstitutional, in that it does not provide for a hearing to surrounding landowners in advance of the development of oil in the area. On this ground, a three-judge court was requested and appointed. Plaintiffs tested this constitutional conclusion by moving for summary judgment, and losing. They also sought a preliminary injunction in this case against any oil operations in the Channel, a motion denied by Judge Stephens, and appealed unsuccessfully to the Court of Appeals for the Ninth Circuit on constitutional and other grounds. That court indicated that only the three-judge court should properly give such an injunction on con-

stitutional grounds, and rejected all non-constitutional grounds. Certiorari has been applied for.

Malley involves the Army Engineers. As the memoranda on file set forth at some length, the Secretary of the Interior generally runs O.C.S. oil operations. When a structure is to be installed, however, a permit is needed from the Engineers. In *Malley*, a hearing before the Army Engineers in advance of issuance of any permit was sought on the ground that the Constitution required that they be interpreted as having this meaning. The District Court denied a preliminary injunction, and the Court of Appeals affirmed, finding that the statutes and regulations did not require a hearing, and likewise, that the Constitution did not require such a construction of the statutes. Again, certiorari has been applied for.

Presently, there are pending the following motions (involving the following issues):

(1) *Motions to amend or alter the pleadings.*

In all three cases, plaintiffs seek to amend by interlineation, to state that in exercising their various responsibilities, the governmental agencies have failed to comply with the National Environmental Policy Act of 1969. Those motions are opposed on the following grounds:

(a) that amendments by interlineation are normally forbidden under the local rules (Local Rule 4(1)), and are singularly inappropriate in cases of significance, where it is highly important that some order be kept to the pleadings file;

(b) in that the pleadings, as amended, would make no sense—the effect would be to state that leases are invalid under statutes which were not adopted until two years after the leases were issued; and

(c) in that, in *Weingand*, and *County of Santa Barbara v. Hickel (Russell)*, the effect would be to introduce before the three-judge court a separate single-judge lawsuit, which does not require a three-judge court. Whether the Department of the Interior has complied with that National Environmental Policy Act has nothing to do with whether the O.C.S. Act is unconstitutional. The three-judge procedure is "a difficult tax" on the judicial system, and is not to be expanded. Three-judge jurisdiction of an independent non-constitutional issue may not be obtained by purporting to tie it to an unconnected claim. (*Calif. Water Service Co. v. City of Redding*, 304 U.S. 252, 255-56, 58 S. CT. 865, 866-67 (1938)).

It seems to us that the motions to amend must be decided by the three-judge court, which alone can determine if it is to be subject to this added burden.

(2) *Motions to dismiss.*

Motions to dismiss are pending in all cases. In the *Weingand* and *Hickel (Russell)* cases, motions to dismiss rest on absence of indispensable parties, and on the ground that in any event the complaints do not state a claim. Briefly, as to the indispensability of parties, the issue is that the suits affect the property interests of the United States. It is a lessor and has an interest in oil production. Such a party is indispensable in a suit to enjoin oil production, and since the United States cannot be sued, dismissal is appropriate.

In addition, it is urged that the complaints do not and cannot state a claim. Since the Outer Continental Shelf Act authorizes oil and gas leases, the first cause of action in *Hickel (Russell)* must fail: whether or not the drilling for oil in the Outer Continental Shelf

is "ultrahazardous", it is authorized by the statute and is within the Secretary's authority. Similarly, as the three-judge court found on the motions for summary judgment, there is nothing to the constitutional issues. To the extent that the *Weingand*, and *County of Santa Barbara v. Hickel (Russell)* cases assert any statutory or rule-created right to a hearing prior to oil development, the Court of Appeals held that there is none. Ergo, it would appear that *Hickel (Russell)* ought to be dismissed. *Malley* involves the claim that the Army Engineers are required to grant a hearing whenever the Engineers permit a well to be drilled or a structure installed: on the appeal from the denial of the preliminary injunction, the Court of Appeals held the contrary.

There is a problem, however, in scheduling an immediate hearing. Plaintiffs have asked for certiorari on the ruling of the Court of Appeals. Until those applications are acted on, the Court of Appeals' ruling is not final. Once final, it becomes the law of the case; until then, action would seem inappropriate.

(3) *Motions for preliminary injunction.*

A preliminary injunction is sought by plaintiffs in all cases. In *Weingand* and in *Hickel (Russell)*, the situation is complicated. It appears that all germane prayers have been abandoned. The following is the story:

(a) Originally, plaintiffs moved in both *Weingand* and *Hickel (Russell)* for a preliminary injunction forbidding the authorization by the Secretary of the Interior of the drilling of any wells in the Channel under the existing leases without first holding a public hearing of some sort. Both constitutional and non-

constitutional grounds were relied on. That motion was heard by a single judge. The injunction was denied. An appeal was taken to the Court of Appeals, which, as respects the non-constitutional ground, held that the statutes and regulations applicable do not require a public hearing (426 F.2d 164 (1970)). In affirming, the Court of Appeals described the merits saying that ". . . plaintiffs have here so related their irreparable damage contention to their asserted right to a hearing that a consideration of the merits cannot be avoided." (Id. at 168.) Again, it would seem that the decision of the Court of Appeals, when final, will be the law of the case on all non-constitutional grounds. The Court of Appeals declined to consider the constitutional grounds, on the basis that those were matters before the three-judge court and not properly before it.

Under date of June 4, 1970, plaintiffs then filed a motion for a preliminary injunction before the three-judge court. The motion asked that the Secretary be enjoined "from granting permits for the erection of any new oil-well platforms and authorizing any new oil operations in the Santa Barbara Channel without first according the plaintiffs a public hearing. . . ." The motion was made on the ground that the defendants' conduct abridges plaintiffs' right to due process, and on the ground that the O.C.S. Act and the regulations thereunder are repugnant to the due process clause of the Fifth Amendment.

They also moved for an injunction restraining the Secretary ". . . from making his decision in re-evaluating the procedure to be pursued in the future to insure maximum protection of Southern California waters and beaches from oil seepage in the Santa Barbara Channel, without first complying with Section

102(C) of the National Environmental Policy Act of 1969. . . ." This motion was made on the ground that ". . . the forthcoming decision as to the Santa Barbara Channel is a major Federal action significantly affecting the quality of the human environment. . . ." The claim that there was a pending decision was based on the affidavit of Fred Okrand to the effect that ". . . on or about February 24, 1970, Secretary of the Interior Walter J. Hickel publicly announced that in three to six months from that time, a decision would be made, after a thorough review of all data and testimony, as to the best procedure to be pursued in the future to insure maximum protection of Southern California waters and beaches from oil seepage in the Santa Barbara Channel."

Affidavits and fairly extended authorities were filed in response to that motion. Plaintiffs then filed a Reply Memorandum on or about August 26, 1970, which indicated that the injunction desired was something different from that originally sought. An injunction against the Secretary's "re-evaluating the procedure to be pursued in the future" was still sought. Apparently the prayer for an injunction against "granting permits for the erection of any new oil-well platforms and authorizing any new oil operations in the Santa Barbara Channel without first according to plaintiffs a public hearing . . ." was withdrawn: at least it is not included in the list of "the relief which plaintiffs seek and to which they feel entitled on their motion for a preliminary injunction" enumerated at pages 39-40 of their Reply Memorandum. For that they substituted the request "that the Secretary be enjoined from granting the Santa Ynez Unit application of defendants Humble

Oil & Refining Company . . . without first affording a public hearing thereon. . . ."

We have responded fully to that revised prayer: we could hardly leave it unattended. At the same time, we must add that it seems to us that the request is not properly before the Court at all. The complaint says nothing about the unit agreement, even as it would be interlined. The application for an injunction said nothing about enjoining the unit agreement. The affidavits filed show that the only effect of the unit agreement is to reduce the number of platforms and wells which are required in developing leases, since a unit agreement permits several leases to be developed as a single parcel. Without at this time attempting to re-argue the question fully, we submit that it cannot be permissible to debate enjoining approval of a unit under plaintiffs' "hearing" theory, under a complaint which says nothing about it, by virtue of the provisions of a statute which was not even enacted when the complaint was filed, which statute says nothing about granting hearings anyway in a lawsuit which does not name all the parties to the unit and which names others who are not parties. We add that the unit agreement has at this date received its full administrative process and approval, and at the present time, so far as we are aware, there is no administrative action pending to enjoin.

Much the same situation exists with respect to the various requests that an injunction be issued against the Secretary's proposed "reconsideration". The claim that there was such in the offing was based on a newspaper report. Dr. Pecora's affidavit indicates that nothing of the sort is pending in the Department. The six to eight months referred to in Mr. Okrand's affidavit

is long since passed. We do not believe it appropriate to enjoin a "reconsideration", which so far as we can discern, simply is not in process.

With much deference, therefore, we submit that there is in fact nothing presently pending which is in any state for a decision, so far as preliminary injunctions are concerned.

CONCLUSION

We think it unfortunate that all this procedural confusion has hampered the orderly presentation of the issues in this case. We suggest that in order to get the questions, which we assume both parties would like to see adjudicated, finally and satisfactorily disposed of, that the following procedures be followed:

(a) We would suggest that the motions to dismiss and the motions for preliminary injunctions on the constitutional grounds be argued before the three-judge court at a convenient date. It is our belief that the constitutional issues involved are essentially frivolous, and the sooner they are disposed of the better. We do not think that a real question exists as to whether the Outer Continental Shelf Act is valid. The three-judge court ruled that it was valid, on the motion for summary judgment, and we assume that the same conclusion would be dispositive of the constitutional grounds set forth in the complaints of *Weingand* and *Hickel (Russell)*. However, since the complaints will be up for dismissal on non-constitutional grounds as well as constitutional grounds, it would seem inappropriate to hold the hearing until there are final opinions in the appeals now before the Supreme Court on certiorari.

(b) As we understand the matter, plaintiffs are now principally interested in asserting that the National Environmental Policy Act of 1969 requires a hearing before development of the leases go forward in some degree. In the past, the application for injunction was hung on the installation of particular platforms, then it was phrased in terms of any platforms, then it was phrased in terms of the approval of a unit agreement (which, of all the possible acts relating to the development of the Channel, is one of which plaintiffs certainly should not complain, and in any event is now (*sic*) now "pending"), and it was also hung on a hypothetical "reconsideration" by the Secretary, which on the record before this Court apparently does not exist. If, as it now seems to be the case, plaintiffs' principal interest arises under the National Environmental Policy Act, we would very respectfully suggest that they first determine for themselves what the stage of development is which they contend is a "major Federal action" within the Act—the installation of an additional well, an additional platform, the approval of a plan of operations, or anything else, and then prepare an appropriate complaint, and if they wish, an appropriate application for preliminary injunction. The complaint should be new—it has nothing to do with any of the claims now asserted. At that point, it should then be feasible to respond in an orderly way.

It is possible that a conference of counsel with the Court might be helpful in this connection. In this, and in any other respect, we are, of course, at the Court's disposal. We have no interest in delay: necessarily, our clients are making very large expenditures in developing their leases for which they paid so much, and under which they have large obligations. But those

same very serious expenditures and significant obligations preclude acceptance of a chaotic approach to these cases.

Dated: December 18, 1970.

Respectfully submitted,

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Attorneys for Defendant
Phillips Petroleum Company
(In all cases but No. 69-1317-ALS)

AFFIDAVIT OF SERVICE BY MAIL.

State of California, County of Los Angeles—ss.

Dolores Cook, being first duly sworn, deposes and says: that her business address is 615 South Flower Street, Los Angeles, California 90017; that she is a citizen of the United States over the age of 18 years employed in the County of Los Angeles, California, and not a party to this cause; that on December 18, 1970, she served a copy of the document to which this proof of service is attached upon each of the persons named below by depositing the same, enclosed in sealed envelopes addressed respectively as shown below with postage thereon fully prepaid, in a mail box, mail chute or like facility regularly maintained by the Government of the United States at 615 South Flower Street, Los Angeles, California 90017; that the names and addresses of the persons served, as shown on said envelopes, were as follows:

GEORGE P. KADING, County Counsel
JOHN J. MITCHELL, JR.
MARVIN LEVINE
MELBOURNE B. WEDDLE
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105 East Anapamu Street
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STANLEY T. TOMLINSON, City Attorney
City of Santa Barbara, City Hall
Santa Barbara, California 93101

A. L. WIRIN
FRED OKRAND
257 South Spring Street
Los Angeles, California 90012

/s/ Dolores Cook
Dolores Cook

Subscribed and sworn to before me this 18th day of December, 1970.

Barbara Reed
Notary Public in and for said County and State.
BARBARA REED

[Seal]